

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 22-31V

UNPUBLISHED

BEVERLY LUCKNER and
MARGARET SUTTO, as Personal
Representatives of the ESTATE OF
ELEANOR VLACK,

Petitioners,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: October 14, 2022

Special Processing Unit (SPU);
Damages Decision Based on Proffer;
Influenza (Flu) Vaccine; Guillain-
Barre Syndrome (GBS)

Anne Carrion Toale, Maglio Christopher & Toale, PA, Sarasota, FL, for Petitioners.

Katherine Carr Esposito, U.S. Department of Justice, Washington, DC, for Respondent.

DECISION AWARDING DAMAGES¹

On January 10, 2022, Beverly Luckner and Margaret Sutto, as personal representative of the estate of Eleanor Vlack ("Petitioenr's") filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*² (the "Vaccine Act"). Petitioners allege that Ms. Vlack suffered from Guillain-Barre Syndrome ("GBS" and death as a result of receiving an influenza vaccine on September 17, 2020.. Petition at 1-3. The case was assigned to the Special Processing Unit of the Office of Special Masters.

¹ Because this unpublished Decision contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims' website in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). **This means the Decision will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), Petitioners have 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all section references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

On October 3, 2022, a ruling on entitlement was issued, finding Petitioners entitled to compensation for GBS. On October 14, 2022, Respondent filed a proffer on award of compensation ("Proffer") indicating Petitioners should be awarded \$405,000.00 comprised of \$155,000.00 for pain and suffering and \$250,000.00 representative of the death benefit. Proffer at 2. In the Proffer, Respondent represented that Petitioners agree with the proffered award. *Id.* Based on the record as a whole, I find that Petitioners are entitled to an award as stated in the Proffer.

Pursuant to the terms stated in the attached Proffer, **I award Petitioners a lump sum payment of \$405,000.00 (comprised of \$155,000.00 for pain and suffering and \$250,000.00 representative of the death benefit) in the form of a check payable to Petitioners.** This amount represents compensation for all damages that would be available under Section 15(a).

The Clerk of Court is directed to enter judgment in accordance with this decision.³

IT IS SO ORDERED.

s/Brian H. Corcoran
Brian H. Corcoran
Chief Special Master

³ Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.

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BEVERLY LUCKNER and
MARGARET SUTTO, as Personal
Representatives of the ESTATE OF
ELEANOR VLACK,

Petitioners,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

No. 22-31V (ECF)
Chief Special Master Corcoran

PROFFER ON AWARD OF COMPENSATION¹

I. Procedural History

On January 10, 2022, Beverly Luckner and Margaret Sutto, as Personal Representatives of the Estate of Eleanor Vlack (“petitioners”) filed a petition for compensation (“petition”) under the National Childhood Vaccine Injury Act of 1986, 42 U.S.C. §§ 300aa-1 to -34, *as amended*. Petitioners allege that, as a result of receiving the influenza vaccine on September 17, 2020, Ms. Vlack suffered from Guillain-Barre Syndrome (“GBS”) and death. *See* Petition. On September 29, 2022, respondent filed his Vaccine Rule 4(c) report, concluding that Ms. Vlack suffered GBS as defined by the Vaccine Injury Table, within the Table timeframe, and that her death was a complication of her treatment for GBS. On October 3, 2022, Chief Special Master Corcoran issued a ruling on entitlement, finding that petitioners were entitled to compensation for a GBS Table injury.

¹ This Proffer does not include attorneys’ fees and costs, which the parties intend to address after the Damages Decision is issued.

II. Items of Compensation

Based upon the evidence of record, respondent proffers that petitioners should be awarded a lump sum of **\$405,000.00**, for all damages, including \$155,000.00, representative of pain and suffering to Ms. Vlack, and \$250,000.00, representative of the death benefit. This amount represents all elements of compensation to which petitioners are entitled under 42 U.S.C. § 300aa-15(a). Petitioners agree.

III. Form of the Award

Respondent recommends that the compensation provided to petitioners should be made through a lump sum payment, as described below, and requests that the Chief Special Master's decision and the Court's judgment award the following: A lump sum payment of **\$405,000.00** in the form of a check payable to petitioners, as Personal Representatives of the Estate of Eleanor Vlack.² Petitioners agree.

Respectfully submitted,

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Director
Torts Branch, Civil Division

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Deputy Director
Torts Branch, Civil Division

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² Should petitioners die prior to entry of judgment, the parties reserve the right to move the Court for appropriate relief.

s/Katherine C. Esposito
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